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Attorneys for Defendants K-M Industries Holding Co. Inc.; K-M Industries Holding Co. Inc. ESOP Plan Committee; and CIG ESOP Plan Committee

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

THOMAS FERNANDEZ and LORA SMITH, individually and on behalf of a class of all others similarly situated,	)	Case No. C06-07339 MJJ
	)	
Plaintiffs,	)	ANSWER OF DEFENDANTS K-M INDUSTRIES HOLDING CO., INC.,
	)	K-M INDUSTRIES HOLDING CO.
v.	)	INC. ESOP PLAN COMMITTEE
	)	AND CIG ESOP PLAN
K-M INDUSTRIES HOLDING CO., INC.;	)	COMMITTEE TO COMPLAINT
K-M INDUSTRIES HOLDING CO. INC.	)	
ESOP PLAN COMMITTEE; WILLIAM E.	)	
AND DESIREE B. MOORE REVOCABLE	)	
TRUST; ADMINISTRATOR OF THE	)	
ESTATE OF WILLIAM E. MOORE,	)	
DECEASED; CIG ESOP PLAN	)	
COMMITTEE; and NORTH STAR TRUST	)	
COMPANY,	)	
	)	
Defendants.	)	

Defendants K-M Industries Holding Co., Inc. (“KMH”), K-M Industries Holding Co. Inc. ESOP Plan Committee (“the KMH Plan”) and CIG

ESOP Plan Committee ("the CIG Plan") hereby answer the allegations contained in the Complaint (the "Complaint") filed on November 29, 2006, by plaintiffs Thomas Fernandez and Lora Smith (collectively, "Plaintiffs"), as follows:

**ANSWER TO ALLEGATIONS REGARDING JURISDICTION AND  
VENUE**

1. KMH, the KMH Plan and the CIG Plan admit that Plaintiffs purport to bring this action pursuant to Title I of ERISA, and admit that the Complaint purports to seek injunctive, equitable and other relief. KMH, the KMH Plan and the CIG Plan lack sufficient information to form a belief as to the truth or falsity of the balance of Plaintiffs' allegations concerning their purpose in filing the complaint and therefore deny them. Except as specifically admitted, KMH, the KMH Plan and the CIG Plan deny the allegations of Paragraph 1.

2. Admitted.

3. KMH, the KMH Plan and the CIG Plan admit that one or more of the Defendants may be found in this District, admit that the employee benefit plan at issue is administered in San Carlos, California and deny that any events or omissions occurred in this District or elsewhere that give rise to any valid claims (asserted in this action or otherwise). Except as specifically admitted, KMH, the KMH Plan and the CIG Plan deny the allegations of Paragraph 3.

**ANSWER TO ALLEGATIONS REGARDING INTRA-DISTRICT  
ASSIGNMENT**

4. KMH, the KMH Plan and the CIG Plan admit that "the employee benefit plan at issue is administered in San Carlos, California." Except as specifically admitted, KMH, the KMH Plan and the CIG Plan deny the allegations of Paragraph 4.

**ANSWER TO ALLEGATIONS REGARDING PARTIES**

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1           5.       KMH, the KMH Plan and the CIG Plan admit that Plaintiff Thomas  
2       Fernandez has been a participant in the KMH Plan or the CIG Plan, and further  
3       admit that he was employed by CIG from about July 1996 until about October  
4       2005. Except as specifically admitted, KMH, the KMH Plan and the CIG Plan are  
5       without information sufficient to form a belief as to the truth or falsity of the  
6       allegations in Paragraph 5, and therefore deny these allegations.

7           6.       KMH, the KMH Plan and the CIG Plan admit that Plaintiff Lora  
8       Smith has been a participant in the KMH Plan or the CIG Plan, and further admit  
9       that she was employed by CIG from about September 1996 until about October  
10      2001. Except as specifically admitted, KMH, the KMH Plan and the CIG Plan are  
11      without information sufficient to form a belief as to the truth or falsity of the  
12      allegations in Paragraph 6, and therefore deny these allegations.

13          7.       KMH, the KMH Plan and the CIG Plan admit that KMH was the  
14      Sponsor of the KMH Plan, that at some or all relevant times, KMH was the  
15      Administrator of the KMH Plan and that under Section 18(2)(A) of the KMH Plan,  
16      the Board of Directors of KMH was responsible for appointing the members of the  
17      KMH Plan Committee. Except as specifically admitted, KMH, the KMH Plan and  
18      the CIG Plan are without knowledge or information sufficient to form a belief as to  
19      the truth or falsity of the allegations in Paragraph 7, and therefore deny these  
20      allegations.

21          8.       Admitted.

22          9.       KMH, the KMH Plan and the CIG Plan admit that under the terms  
23      of the KMH Plan, KMH and the KMH Plan Committee were "named fiduciaries"  
24      with respect to, and limited to, certain aspects of the management and operation of  
25      the Plan, as set forth in the Plan itself. KMH, the KMH Plan and the CIG Plan  
26      also admit that at some relevant times, William E. Moore was the sole member of  
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1 the Plan Committee for the KMH Plan and was a trustee and settler of the Moore  
2 Trust. Except as specifically admitted, KMH, the KMH Plan and the CIG Plan are  
3 without knowledge or information sufficient to form a belief as to the truth or  
4 falsity of the allegations in paragraph 9, and therefore deny these allegations.

5 10. KMH, the KMH Plan and the CIG Plan admit that William E.  
6 Moore founded Kelly-Moore Paint Co., that he died on November 21, 2004, that  
7 until the time of his death, Mr. Moore was Chairman of KMH, and that Mr. Moore  
8 was a trustee and settler of the Moore Trust. KMH, the KMH Plan and the CIG  
9 Plan also admit that Mr. Moore was a "party in interest" as alleged, and that Mr.  
10 Moore, as a member of the KMH Plan Committee, had and exercised such  
11 discretionary authority as was specifically described in the KMH Plan. Except as  
12 specifically admitted, KMH, the KMH Plan and the CIG Plan deny the allegations  
13 in Paragraph 10.

14 11. KMH, the KMH Plan and the CIG Plan admit that at some times  
15 prior to the effective date of the KMH Plan, the CIG ESOP Plan Committee was  
16 Administrator of the CIG Plan, and that the CIG ESOP Plan Committee was a  
17 named fiduciary of the CIG Plan, with fiduciary duties relating and limited to those  
18 discretionary responsibilities specifically set forth in the CIG Plan. KMH, the  
19 KMH Plan and the CIG Plan also admit that at some relevant times, Mr. Moore  
20 was the sole member of the CIG Plan Committee, that Mr. Moore was a trustee  
21 and settler of the Moore Trust and that the CIG Plan was merged into the KMH  
22 Plan on or about July 16, 1999. Except as specifically admitted, KMH, the KMH  
23 Plan and the CIG Plan are without information sufficient to form a belief as to the  
24 truth or falsity of the allegations in Paragraph 11, and therefore deny these  
25 allegations.

26 12. KMH, the KMH Plan and the CIG Plan admit that at some time  
27  
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1 after Mr. Moore ceased to act as Trustee of the KMH Plan, North Star became the  
 2 KMH Plan's Trustee, and that as KMH Plan Trustee, North Star was a Plan  
 3 fiduciary respecting and limited to those discretionary duties and functions  
 4 specifically described in the KMH Plan. Answering further, KMH, the KMH Plan  
 5 and the CIG Plan allege that North Star became the KMH Plan Trustee in April  
 6 2003, more than a year prior to Mr. Moore's death. Except as specifically  
 7 admitted or alleged, KMH, the KMH Plan and the CIG Plan are without  
 8 information sufficient to form a belief as to the truth or falsity of the allegations in  
 9 Paragraph 12, and therefore deny these allegations.

10 13. Admitted.

## 11 ANSWER TO ALLEGATIONS REGARDING FACTS

### 12 Company History

13 14. Admitted.

14 15. KMH, the KMH Plan and the CIG Plan admit that in the 1960's and  
 15 1970's, Kelly-Moore manufactured products that contained asbestos provided by  
 16 Union Carbide Company, and admit that in the Union Carbide litigation, KMH  
 17 presented an analysis suggesting that the then-pending asbestos litigation  
 18 represented a potential threat to KMH's future viability. Except as specifically  
 19 admitted, KMH, the KMH Plan and the CIG Plan deny the allegations of  
 20 Paragraph 15.

21 16. KMH, the KMH Plan and the CIG Plan admit that in 1985, Kelly-  
 22 Moore Paint Co. purchased the outstanding shares of Calmutual Insurance  
 23 Company, the predecessor to California Insurance Group. Except as specifically  
 24 admitted, KMH, the KMH Plan and the CIG Plan are without information  
 25 sufficient to form a belief as to the truth or falsity of the allegations in Paragraph  
 26 16, and therefore deny these allegations.

1           17.     KMH, the KMH Plan and the CIG Plan deny the allegations of the  
2 first sentence of Paragraph 17, and otherwise admit the allegations of Paragraph  
3 17.

4           18.     Admitted.

5           19.     KMH, the KMH Plan and the CIG Plan admit that KMH sued  
6 Union Carbide in Texas on claims related to materials containing asbestos which  
7 Union Carbide had earlier supplied to Kelly-Moore Paint Co. Except as  
8 specifically admitted, KMH, the KMH Plan and the CIG Plan are without  
9 information sufficient to form a belief as to the truth or falsity of the allegations in  
10 Paragraph 19, and therefore deny these allegations.

#### 11                                   **ESOP History**

12           20.     Admitted.

13           21.     Admitted.

14           22.     Admitted.

#### 15                                   **ESOP Transactions**

16           23.     KMH, the KMH Plan and the CIG Plan admit that William Moore  
17 acted on behalf of the Moore Trust in connection with transactions alleged in the  
18 Complaint. Except as specifically admitted, KMH, the KMH Plan and the CIG  
19 Plan are without information sufficient to form a belief as to the truth or falsity of  
20 the allegations in Paragraph 23, and therefore deny these allegations.

21           24.     KMH, the KMH Plan and the CIG Plan admit that on or about  
22 October 13, 1998, the Paint Plan purchased approximately 33,745,455 shares of  
23 KMH Series P stock from the Moore Trust at approximately \$6.88 per share, for a  
24 total purchase price of approximately \$232 million. KMH, the KMH Plan and the  
25 CIG Plan also admit that the Paint Plan borrowed approximately \$232 million  
26 from KMH to fund the purchase of Series P stock. Answering further, KMH, the  
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1 KMH Plan and the CIG Plan allege that in connection with the above purchase of  
2 KMH Series P stock, a valuation of the Kelly-Moore Paint Company, Inc. was  
3 done by an independent expert. Except as specifically admitted, KMH, the KMH  
4 Plan and the CIG Plan are without information sufficient to form a belief as to the  
5 truth or falsity of the allegations in Paragraph 24, and therefore deny these  
6 allegations.

7 25. KMH, the KMH Plan and the CIG Plan deny the allegations of  
8 Paragraph 25.

9 26. KMH, the KMH Plan and the CIG Plan deny the allegations of  
10 Paragraph 26.

11 27. KMH, the KMH Plan and the CIG Plan deny the allegations of  
12 Paragraph 27.

13 28. KMH, the KMH Plan and the CIG Plan deny the allegations of  
14 Paragraph 28.

15 29. KMH, the KMH Plan and the CIG Plan deny the allegations of  
16 Paragraph 29.

17 30. KMH, the KMH Plan and the CIG Plan admit that the valuation  
18 report prepared in connection with the October 13, 1998 transaction does not  
19 contain a reference to a discount attributable to the fact that the stock purchased by  
20 the Paint Plan was tracking stock rather than ordinary common stock. Except as  
21 specifically admitted, KMH, the KMH Plan and the CIG Plan are without  
22 information sufficient to form a belief as to the truth or falsity of the allegations of  
23 Paragraph 30 and therefore deny these allegations.

24 31. KMH, the KMH Plan and the CIG Plan admit that in October 1999,  
25 the KMH ESOP purchased approximately 8,400,000 shares of KMH for  
26 approximately \$55 million and that the KMH Plan borrowed more than \$54  
27  
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million from KMH to fund the purchase. Answering further, KMH, the KMH Plan and the CIG Plan allege that in connection with the above purchase of KMH Class I-B stock, a valuation of the KMH Class I-B stock was made by an independent expert. Except as specifically admitted, KMH, the KMH Plan and the CIG Plan deny the allegations of Paragraph 31.

32. KMH, the KMH Plan and the CIG Plan admit that an independent expert valuation of the KMH Class I-B stock concluded that it was worth \$3.66 per share as of December 31, 1999 and that this value was approximately 56% of the appraised value of shares in connection with October 1999 transaction. Except as specifically admitted, KMH, the KMH Plan and the CIG Plan deny the allegations of Paragraph 32.

33. KMH, the KMH Plan and the CIG Plan deny the allegations of Paragraph 33.

34. KMH, the KMH Plan and the CIG Plan deny the allegations of Paragraph 34.

35. KMH, the KMH Plan and the CIG Plan deny the allegations of Paragraph 35.

36. KMH, the KMH Plan and the CIG Plan deny the allegations of Paragraph 36.

37. KMH, the KMH Plan and the CIG Plan deny the allegations of Paragraph 37.

38. KMH, the KMH Plan and the CIG Plan deny the allegations of Paragraph 38.

39. KMH, the KMH Plan and the CIG Plan admit that William E. Moore acted on behalf of the Moore Trust in connection with the transactions involving the acquisition of Series P and Series I tracking stock by the Paint Plan

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1 and the KMH Plan. Answering further, KMH, the KMH Plan and the CIG Plan  
2 allege that there were other persons involved in the transactions that acted on  
3 behalf of the Paint Plan and the KMH Plan. Except as specifically admitted,  
4 KMH, the KMH Plan and the CIG Plan are without information sufficient to form  
5 a belief as to the truth or falsity of the remaining allegations in Paragraph 39, and  
6 therefore deny these allegations.

7 40. KMH, the KMH Plan and the CIG Plan deny the allegations of  
8 Paragraph 40.

9 41. KMH, the KMH Plan and the CIG Plan deny the allegations of  
10 Paragraph 41.

11 42. KMH, the KMH Plan and the CIG Plan admit that no valuations of  
12 the Series I and Series P stock held by the KMH Plan were made during the 2003  
13 and 2004 Plan Years, and admit that Summary Annual Reports were not provided  
14 to Plan participants during those years. Answering further, KMH, the KMH Plan  
15 and the CIG Plan allege that in 2005, valuations of the Series I and Series P stock  
16 held by the KMH Plan were made as of 2003 and 2004. Except as otherwise  
17 admitted, KMH, the KMH Plan and the CIG Plan deny the allegations of  
18 Paragraph 42.

19 43. KMH, the KMH Plan and the CIG Plan admit that the valuation  
20 reports for KMH Series I stock as of December 31, 2000 and December 31, 2001  
21 do not specifically mention potential asbestos-related liability. KMH, the KMH  
22 Plan and the CIG Plan further admit that the valuation report assessing the value of  
23 KMH Series I stock as of December 31, 2002 does mention potential asbestos-  
24 related liability. Except as otherwise admitted, KMH, the KMH Plan and the CIG  
25 Plan deny the allegations of Paragraph 43.

26 44. Admitted.  
27  
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1           45.     KMH, the KMH Plan and the CIG Plan admit that KMH stock is  
2 not and has not been readily tradable on an established market. The remaining  
3 allegations of this paragraph do not state facts, but rather state legal conclusions  
4 that require no response. To the extent that a response is required, KMH, the  
5 KMH Plan and the CIG Plan incorporate the relevant provisions of the IRC.

6           46.     KMH, the KMH Plan and the CIG Plan are without information  
7 sufficient to form a belief as to the truth or falsity of the allegations in Paragraph  
8 46, and therefore deny these allegations.

9           47.     KMH, the KMH Plan and the CIG Plan are without information  
10 sufficient to form a belief as to the truth or falsity of the allegations in Paragraph  
11 47, and therefore deny these allegations.

12           48.     KMH, the KMH Plan and the CIG Plan deny the allegations of  
13 Paragraph 48.

14           49.     KMH, the KMH Plan and the CIG Plan deny the allegations of  
15 Paragraph 49.

16           50.     KMH, the KMH Plan and the CIG Plan are without information  
17 sufficient to form a belief as to the truth or falsity of the allegations in Paragraph  
18 50, and therefore deny these allegations.

19                   **ANSWER TO CLASS ALLEGATIONS**

20           51.     KMH, the KMH Plan and the CIG Plan admit that Plaintiffs are  
21 seeking to bring their alleged claims on behalf of a class of persons who are  
22 currently or have been beneficiaries or participants in the KMH ESOP since  
23 October 13 1998. Except as otherwise admitted, KMH, the KMH Plan and the  
24 CIG Plan specifically deny the allegations of Paragraph 51, including the  
25 allegation, express or implied, that Plaintiffs have satisfied the statutory and  
26 procedural requirements for class treatment under Fed. R. Civ. P. 23(a) or (b).  
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52. KMH, the KMH Plan and the CIG Plan admit that as of December 31, 2004, there were over 2500 participants in the KMH Plan. Except as otherwise admitted, KMH, the KMH Plan and the CIG Plan deny the allegations of Paragraph 52.

53. KMH, the KMH Plan and the CIG Plan deny the allegations of Paragraph 53.

54. KMH, the KMH Plan and the CIG Plan deny the allegations of Paragraph 54.

55. KMH, the KMH Plan and the CIG Plan deny that Plaintiffs will fairly and adequately represent the interest of the Plaintiff Class. KMH, the KMH Plan and the CIG Plan are without information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 55 and therefore deny these allegations.

56. KMH, the KMH Plan and the CIG Plan deny the allegations of Paragraph 56.

57. KMH, the KMH Plan and the CIG Plan deny the allegations of Paragraph 57.

58. KMH, the KMH Plan and the CIG Plan are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 58, and therefore deny these allegations.

#### **ANSWER TO ALLEGATIONS REGARDING FIRST CLAIM FOR RELIEF**

59. KMH, the KMH Plan and the CIG Plan incorporate the responses to the allegations of Paragraphs 1 through 58, inclusive, as though fully set forth herein.

60. The allegations of Paragraph 60 state legal conclusions, to which no response is required. To the extent a response is required, KMH, the KMH Plan

1 and the CIG Plan incorporate the relevant provisions of ERISA § 404.

2 61. The allegations of Paragraph 61 state legal conclusions, to which no  
3 response is required. To the extent a response is required, KMH, the KMH Plan  
4 and the CIG Plan incorporate the relevant provisions of ERISA § 409.

5 62. The allegations of Paragraph 62 state legal conclusions, to which no  
6 response is required. To the extent a response is required, KMH, the KMH Plan  
7 and the CIG Plan incorporate the relevant provisions of ERISA § 502.

8 63. The allegations of Paragraph 63 state legal conclusions, to which no  
9 response is required. To the extent a response is required, KMH, the KMH Plan  
10 and the CIG Plan incorporate the relevant provisions of ERISA § 502.

11 64. KMH, the KMH Plan and the CIG Plan deny the allegations of  
12 Paragraph 64.

13 65. The allegations of Paragraph 65 state legal conclusions, to which no  
14 response is required. To the extent an answer is required, KMH, the KMH Plan  
15 and the CIG Plan deny the allegations of paragraph 65 insofar as they assert,  
16 expressly or impliedly, that any Defendant Fiduciary has acted or failed to act so as  
17 to incur "co-fiduciary" liability, and incorporate the relevant provisions of ERISA  
18 § 404 and § 405.

19 66. KMH, the KMH Plan and the CIG Plan deny the allegations of  
20 Paragraph 66.

21 **ANSWER TO ALLEGATIONS REGARDING SECOND CLAIM FOR**  
22 **RELIEF**

23 67. KMH, the KMH Plan and the CIG Plan incorporate the responses to  
24 the allegations of Paragraphs 1 through 58, inclusive, as though fully set forth  
25 herein.

26 68. The allegations of Paragraph 68 state legal conclusions, to which no  
27  
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1 response is required. To the extent a response is required, KMH, the KMH Plan  
2 and the CIG Plan incorporates the relevant provisions of ERISA § 406.

3 69. The allegations of Paragraph 69 state legal conclusions, to which no  
4 response is required. To the extent a response is required, KMH, the KMH Plan  
5 and the CIG Plan incorporate the relevant provisions of ERISA § 406.

6 70. The allegations of Paragraph 70 state legal conclusions, to which no  
7 response is required. To the extent a response is required, KMH, the KMH Plan  
8 and the CIG Plan incorporate the relevant provisions of ERISA § 408 and ERISA  
9 § 3(18)(B), their legislative history and attendant case law.

10 71. KMH, the KMH Plan and the CIG Plan deny the allegations of  
11 Paragraph 71.

12 72. KMH, the KMH Plan and the CIG Plan deny the allegations of  
13 Paragraph 72.

14 73. KMH, the KMH Plan and the CIG Plan deny the allegations of  
15 Paragraph 73.

16 74. The allegations of Paragraph 74 state legal conclusions, to which no  
17 response is required. To the extent a response is required, KMH, the KMH Plan  
18 and the CIG Plan incorporate the relevant provisions of ERISA § 409.

19 75. The allegations of Paragraph 75 state legal conclusions, to which no  
20 response is required. To the extent a response is required, KMH, the KMH Plan  
21 and the CIG Plan incorporate the relevant provisions of ERISA § 502.

22 76. The allegations of Paragraph 76 state legal conclusions, to which no  
23 response is required. To the extent a response is required, KMH, the KMH Plan  
24 and the CIG Plan incorporate the relevant provisions of ERISA § 502.

25 77. KMH, the KMH Plan and the CIG Plan deny the allegations of  
26 Paragraph 77.

1           78.     KMH, the KMH Plan and the CIG Plan deny the allegations of  
2 Paragraph 78.

3           79.     The allegations of Paragraph 79 state legal conclusions, to which no  
4 response is required. To the extent an answer is required, KMH, the KMH Plan  
5 and the CIG Plan deny the allegations of paragraph 79 insofar as they assert any  
6 Defendant Fiduciary has acted or failed to act so as to incur "co-fiduciary" liability  
7 and incorporate the relevant provisions of ERISA § 404 and § 405.

8                   **ANSWER TO PRAYER FOR RELIEF**

9           KMH, the KMH Plan and the CIG Plan deny that Plaintiffs are entitled to  
10 judgment or any of the relief requested in paragraphs A through I as to the First  
11 Claim for Relief and paragraphs A through K as to the Second Claim for Relief, or  
12 that Plaintiffs are entitled to any relief whatsoever.

13                   **SEPARATE AND ADDITIONAL DEFENSES**

14                   **FIRST SEPARATE AND ADDITIONAL DEFENSE**

15                   **(Failure to State a Claim)**

16           The Complaint, and each purported cause of action therein, fails to state a  
17 claim on which relief may be granted.

18                   **SECOND SEPARATE AND ADDITIONAL DEFENSE**

19                   **(Statute of Limitations)**

20           The Complaint, and each alleged claim therein, is barred by the statute of  
21 limitations.

22                   **THIRD SEPARATE AND ADDITIONAL DEFENSE**

23                   **(Estoppel)**

24           Plaintiffs are estopped from obtaining the relief sought in the Complaint by  
25 their own acts, statements, conduct and omissions.

26                   **FOURTH SEPARATE AND ADDITIONAL DEFENSE**

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Plaintiffs fail to plead their allegations of fraud and concealment with the requisite particularity.

**FIFTH SEPARATE AND ADDITIONAL DEFENSE****(Reasonable Business Judgment)**

All defendants exercised reasonable business judgment in connection with the transactions alleged in the Complaint.

**SIXTH SEPARATE AND ADDITIONAL DEFENSE****(Lack of Causation)**

No act or omission of KMH, the KMH Plan and the CIG Plan caused or contributed to Plaintiffs' alleged harm and damage, if any.

**SEVENTH SEPARATE AND ADDITIONAL DEFENSE****(Mitigation of Damages)**

Plaintiffs at all times at issue in the Complaint failed to take any or all actions reasonable or necessary under the circumstances to avoid or reduce their alleged damages, if any, and, to the extent of such failure to mitigate, Plaintiffs' claims are barred.

**EIGHTH SEPARATE AND ADDITIONAL DEFENSE****(Reservation of Rights)**

KMH, the KMH Plan and the CIG Plan have insufficient knowledge or information upon which to form a belief as to whether it may have as yet unstated separate and additional defenses available. KMH, the KMH Plan and the CIG Plan thus reserve the right to amend this Answer to add, delete, or modify defenses based upon legal theories which may or will be disclosed through discovery, or clarification or analysis of Plaintiffs' claims.

WHEREFORE, KMH, the KMH Plan and the CIG Plan pray for judgment,

1 as follows:

- 2 1. That the Complaint be dismissed and/or that Plaintiffs take nothing
- 3 by reason of their Complaint;
- 4 2. For costs of suit; and
- 5 3. For such other and further relief as this Court deems just and
- 6 proper.

7

8 DATED: February 14, 2007

LOVITT & HANNAN, INC.

9

10

11 By: 

Ronald Lovitt

J. Thomas Hannan

Henry I. Bornstein

12

13 Attorneys for Defendants K-M Industries

14 Holding Co., Inc.; K-M Industries Holding Co.

15 Inc. ESOP Plan Committee; and CIG ESOP Plan

16 Committee

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OF COUNSEL TO:  
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**PROOF OF SERVICE**

I, Laura J. Davies, the undersigned, hereby certify and declare:

1. I am over the age of 18 years and am not a party to the within cause.

2. I am employed in the office of a member of the bar of this Court, at whose direction this service was made.

3. My business address is 900 Front Street, Suite 300, San Francisco, California 94111.

4. On February 14, 2007, I served a true copy of the attached document(s) titled exactly:

ANSWER OF DEFENDANTS K-M INDUSTRIES HOLDING CO., INC.;  
 K-M INDUSTRIES HOLDING CO. INC. ESOP PLAN COMMITTEE;  
 AND CIG ESOP PLAN COMMITTEE TO COMPLAINT

on the interested parties in this action as follows:

  X   **BY MAIL:** I am readily familiar with my employer's mail collection and processing practices, know that said mail is collected and deposited with the United States Postal Service on the same day it is deposited in the interoffice mail, and know that postage thereon is fully prepaid. Following ordinary business practices, I placed for collection and mailing with the United States Postal Service such envelope(s) at Lovitt & Hannan, Inc., 900 Front Street, Suite 300, San Francisco, California 94111, addressed, sealed and charges prepaid as follows:

Lisa S. Serebin  
 MORGAN, LEWIS & BOCKIUS LLP  
 One Market Street, Spear Street Tower  
 San Francisco, CA 94105

*Attorneys for Defendant*  
**NORTH STAR TRUST COMPANY**

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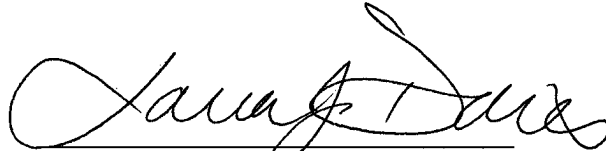
*Attorneys for Defendant*  
**WILLIAM E. AND DESIREE B.**  
**MOORE REVOCABLE TRUST**

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OF COUNSEL TO:  
BARTKO, ZANKEL, TARRANT & MILLER P.C.

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6. I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on February 14, 2007, at San Francisco, California.



Laura J. Davies